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Senate

BIPARTISAN PATIENT PROTECTION ACT

Mr. CARPER. Mr. President, the amendment before us, which I will ask to be withdrawn in a few moments, is one Senator LANDRIEU and I offer, and I know has the support of a number of Members of this body from both sides of the aisle.

A great deal of effort has gone into crafting a compromise with respect to the appropriate venue, Federal or State, for bringing litigation in cases where an HMO has acted inappropriately.

As I have studied this issue over the last week or so, the way the underlying bill assigns venue for State action and for action that is more appropriate in the Federal courts, I have come to believe that the sponsors of the legislation figured it out just right. When it comes to determining damages that might be assigned in cases brought in Federal courts, I personally have concluded that there should not be a cap with respect to economic damages.

I further agree with the approach that is taken in the underlying bill, that in cases where noneconomic damages are sought in Federal courts, particularly in cases where children may be involved who are not working, who do not have a livelihood, or in cases where a spouse--perhaps a woman, but it could easily be a man--who is not in the workforce and stays at home with a family, we may not, if we cap noneconomic damages, be really fair to that young person or to the spouse who is working from the home.

However, with respect to damages at the Federal level, as they pertain to punitive

claims, I am not comfortable with the approach that is embodied in the underlying bill. Senator Breaux and Senator Frist have offered an approach which I think is better in this regard, and I just want to mention it. It deals with whether or not there should be punitive damages awarded on actions taken in Federal courts. I conclude they have it right and those punitive damages should not be allowed in the Federal courts.

Having said that, for actions that are brought in State courts, the laws and rules of the States should prevail. If there are caps in the State courts, that is the business of the States, and that is appropriate. If there are no caps on punitive damages in actions brought before the State courts, that is appropriate as well.

As we try to find the compromise here, I believe the underlying bill has it right with the appropriate middle ground on caps and venue. I believe the underlying bill has it right with respect to damages in a Federal action: No caps on either economic or noneconomic damages. I also believe the underlying bill has it right with respect to the proper venue, State versus Federal.

I believe my friend from Louisiana and my friend from Tennessee have a better idea with respect to punitive damages and they simply should not be allowed in Federal court.

Senator Landrieu is probably en route to the Chamber now to say a few words with respect to the amendment. I do not see that she has arrived yet. If I may, I would like to just reserve the remainder of my time.

